

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ENDO PHARMACEUTICALS INC.
and PENWEST PHARMACEUTICALS
CO.,

Plaintiffs,

v.

IMPAX LABORATORIES, INC.,

Defendant.

C.A. No. 09-831-KSH-PS

C.A. No. 09-832-KSH-PS

C.A. No. 09-833-KSH-PS

STIPULATION OF DISMISSAL AND ORDER

WHEREAS, plaintiffs allege that Penwest Pharmaceuticals Co. ("Penwest") is the assignee and owner of U.S. Patents 5,662,933, 5,958,456 and 7,276,250 (the "Asserted Patents"), and that Endo Pharmaceuticals Inc. ("Endo") is an exclusive licensee of the Asserted Patents in the relevant field of use pursuant to a strategic alliance agreement with Penwest;

WHEREAS, defendant Impax Laboratories, Inc. ("Impax") has submitted to the U.S. Food and Drug Administration Abbreviated New Drug Application No. 79-087 ("Impax ANDA") for approval to market and sell generic oxymorphone HCl extended-release tablets; and

WHEREAS, Endo, Penwest and Impax have entered into a Settlement and License Agreement, dated as of June 8, 2010 ("Settlement and License Agreement"), pursuant to which the parties have resolved the above-referenced action and Plaintiffs have granted to Impax a license under the Asserted Patents in the United States.

NOW, THEREFORE, Endo, Penwest and Impax stipulate that:

1. Impax, its Affiliates and their respective officers, agents, servants, employees and attorneys will not, until the applicable Commencement Date (as defined in the Settlement and License Agreement), engage in the manufacture, use, marketing, offer for sale, or sale in the United States, or importation into the United States, of any generic version of the Opana[®] ER product, except that (a) Impax shall be permitted to manufacture and market (but not use or sell) such products for a reasonable period of time prior to the applicable Commencement Date solely for the purpose of selling such products only on or after the Commencement Date, as set forth in the Settlement and License Agreement, and (b) Impax may conduct, directly or indirectly, any activities protected under 35 U.S.C. § 271(e)(1). The foregoing shall terminate automatically upon the applicable Commencement Date for each product as defined in the Settlement and License Agreement.
2. Pursuant to Rules 41(a)(1) and 41(c) of the Federal Rules of Civil Procedure, plaintiffs, Endo, Penwest and Impax hereby stipulate and agree that the above actions C.A. Nos. 09-831, 09-832 and 09-833 -KSH-PS, including all claims, counterclaims and affirmative defenses between Plaintiffs and Impax, are dismissed with prejudice, except as provided for in sections 2.2 and 8.3 of the Settlement and License Agreement.
3. Each party shall bear its own costs, expenses and attorneys' fees in connection with the above-referenced actions.
4. The parties waive any right of appeal from this Stipulation of Dismissal and Order.
5. The Court retains jurisdiction over this Stipulation of Dismissal and Order, and the interpretation of the Settlement and License Agreement as it pertains to this Stipulation of Dismissal and Order, in the event of any dispute concerning it.

IT IS SO ORDERED, this 15th day of June, 2010.


Hon. Katharine S. Hayden, U.S.D.J.

Stipulated as to form and entry:

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